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FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/09

SPONSOR Rodella LAST UPDATED _____ HJM 15

SHORT TITLE Tierra Amarilla Land Grant Land Use Rights SB _____

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to N/A

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation And Revenue Department (TRD)

Department of Game and Fish (DGF)

SUMMARY

Synopsis of Bill

House Joint Memorial 15 requests the State Game Commission to find a way to grant traditional use rights to the heirs of the Tierra Amarilla land grant-merced for lands controlled by the commission that are located within the historic boundaries of the Tierra Amarilla land grant-merced.

There is no appropriation attached to the legislation.

FISCAL IMPLICATIONS

DGF states: “Fiscal implications could be minimal to significant depending on amount of administrative and management oversight that would be required. The fiscal implications could be very significant if enforcement of this memorial jeopardized federal aid to wildlife funds.”

SIGNIFICANT ISSUES

DGF advises that the State Game Commission owns three parcels of property within the current description of the Tierra Amarilla Land Grant that would be affected by this legislation. These are the Edward Sargent Wildlife Management Area, Rio Chama Wildlife Management Area and the Humphries Wildlife Management Area. All of these properties utilized Federal Aid monies for the purchase and/or operation and maintenance of these areas. Altering the use of the properties would constitute a violation of the federal grants used to purchase the properties and could constitute a diversion of federal funds and result in disentanglement loss of approximately \$11.5 million per year in federal grant funds. DGF further states:

In addition, the Sargent Wildlife Management Area is subject to deed restrictions identifying wildlife habitat as the sole use of the majority of the property. The Rio Chama has contractual obligations that establish the property to be perpetually devoted to public recreation under the administration of the State Game Commission. The Department is required to maintain management for each intended use. There may be conflicts between the contractual intended uses and some or all of the potential traditional uses of the properties. This conflicting use could constitute a diversion of monies or a violation of 17-1-14 NMSA 1978 as game protection fund asset misuse. For this reason, implementation of this Memorial on Commission properties could require the approval of the U. S. Fish and Wildlife Service.

Because federal money was utilized, most management activities are required to meet Federal Aid compliance standards. These standards include Cultural Resources surveys and consultations and Federal Section 7 and Endangered Species Act consultations. Implementation of a traditional use right may require complying with all appropriate federal acts and statutes.

Not knowing what constitutes “Traditional Use Right” there is a potential for conflicts with Statute 17-4-33 (Gaining Access Into Nature) and Regulation 19.43.3 NMAC “Use of Department of Game and Fish Lands” and 17-1-14 NMSA 1978.

The vagueness of what constitutes a “Traditional Use Right” calls into question whether agriculture, hunting, fishing, wood gathering, grazing, water rights, and mineral exploration, etc. might be considered a “Traditional Use Right.” Also how these rights would have to be weighed against any deed restrictions that may apply to a specific property.

DGF concludes by noting that a clear understanding and definition is needed of the length and breadth of who constitutes an heir of the Tierra Amarilla Land Grant. In addition to understanding the who constitutes an heir, there is a question of whether “traditional use rights” are individually or communally defined and regulated.

PERFORMANCE IMPLICATIONS

DGF advises that, depending on the interpretation of what constitutes a “traditional use right,” how any rights would be incorporated into current established state and federal frameworks, and what actual expectations are, could require significant additional oversight.

ADMINISTRATIVE IMPLICATIONS

DGF advises that, depending on the interpretation of what a “traditional use right” constitutes, how any rights would be incorporated into current established state and federal frameworks and what actual expectations are, could require significant additional administrative oversight.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

DGF advises that this memorial may have a relationship with House Bill 39 requiring the department to incorporate land grant boards of trustees in Commission property planning.

TECHNICAL ISSUES

DGF suggests that the memorial states in WHEREAS 4 that “WHEREAS, the Tierra Amarilla land grant-merced is an example of misconfirmation that resulted in the loss of all the common lands of the grant; and.” There is a question of whether the Tierra Amarilla land grant was actually misconfirmed or whether it was accurately classified. Without additional research, this question remains.

AMENDMENTS

None suggested by respondents.

BW/svb